

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 18-cr-20491
Hon. Matthew F. Leitman

v.

TARENCE MARSHALL,

Defendant.

ORDER DENYING DEFENDANT'S
MOTION FOR THE APPOINTMENT OF COUNSEL (ECF No. 57)

Defendant Tarence Marshall is a federal prisoner. On September 9, 2020, the Court denied Marshall's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). (*See* Order, ECF No. 52.) However, the Court told Marshall that he could "renew the motion if there [was] a material adverse change in the COVID-19 situation" at the prison where he was incarcerated. (*See id.*, PageID.401.)

On August 12, 2021, Marshall sent a letter to the Court in which he requests that the Court appoint him counsel so that he can file a renewed motion for compassionate release. (*See* Ltr., ECF No. 57.) Marshall explains that he has experienced a "material adverse change" in his circumstances because the facility where he is currently incarcerated – FCI Ashland – has "active confirmed COVID-19 cases among inmates and staff." (*Id.*, PageID.413.)

The Court then asked Marshall to file a supplement that answered the following questions:

1. Has a COVID-19 vaccine been made available to prisoners generally at FCI Ashland?
2. Have you been offered a COVID-19 vaccine? If so, which vaccine, and when was it offered to you?
3. If a vaccine was offered to you, did you agree to be vaccinated, or did you reject the offer to be vaccinated?
4. If you accepted the offer to be vaccinated, has the vaccine been administered to you? If so, how many doses of the vaccine have you received, and when were the doses administered?
5. Finally, if you agreed to be vaccinated but have not yet been vaccinated, when will the vaccine be administered to you?

(Order, ECF No. 58, PageID.416.)

Marshall responded to the Court's questions on September 5, 2021. (*See* Supp., ECF No. 59.) He explained that the COVID-19 vaccine has been made available to inmates at FCI Ashland, that it was offered to him in February or March, and that he declined to take the vaccine because he had not been told "how it affect[ed] people with underlying health conditions as [he has]" such as high blood pressure. (*Id.*, PageID.418.) Marshall said that he was worried that taking the vaccine could cause him to develop blood clots. (*See id.*)

The Court has carefully reviewed Marshall's motion for the appointment of counsel, and his supplemental response, and the Court declines to appoint counsel for him at this time. Marshall seeks the appointment of counsel to file a motion seeking his compassionate release based upon the presence of COVID-19 in the prison in which he is housed. But the Court would not grant compassionate release on that basis. The Court acknowledges that an increase in the number of staff and inmates at FCI Ashland infected with COVID-19 could constitute a material change in circumstance from when it first denied Marshall relief. However, the circumstances have also changed in a second way: the COVID-19 vaccine is now available to inmates at that facility – including Marshall. And while Marshall has raised some concerns about the safety of the vaccine, he has not provided the Court any medical evidence that could support the conclusion that the vaccine poses a significant risk to him. Therefore, the Court concludes that Marshall lacks an objectively reasonable reason to decline to take the vaccine. Simply put, Marshall has access to a safe and effective way to protect himself against the worst effects of COVID-19, and while he has the right to decline that protection, he cannot then establish that the risk he faces from COVID-19 is an extraordinary and compelling circumstance warranting his compassionate release.

Because the Court would deny a motion by Marshall seeking compassionate release based upon his potential exposure to COVID-19, it concludes that appointing

him counsel to file such a motion is not warranted at this time. For all of these reasons, Marshall's motion for the appointment of counsel (ECF No. 57) is **DENIED.**

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: September 16, 2021

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 16, 2021, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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